

Guardianship Program

FACT SHEET

General Overview

- Guardianship is a court-appointed relationship that arranges for an individual (called a guardian) to make decisions for another person (called the ward).
- A guardianship may be needed when the ward's decision making threatens his or her well-being, or the ward is at risk of emotional or financial danger or physical injury or illness.
- A guardian is required to act in and represent the best interests of a ward, and to protect the ward and his or her rights.
- A guardian must ensure that services are provided in the most normal and least restrictive way possible and are tailored to meet the needs of the ward.
- Guardians are required to involve wards in all decisions to the fullest extent possible.

How is the guardianship process started?

Any person interested in the welfare of an allegedly incapacitated person may petition the court for the appointment of a guardian. After a petition is filed, the court sets a hearing date on the issues of incapacity, appoints an attorney to act as *guardian ad litem*, appoints a physician or clinical psychologist to examine the proposed ward, and appoints a *visitor* to interview the proposed guardian and proposed ward. At the hearing, the court hears evidence about the incapacitation of the proposed ward, and assesses alternative resource plans and the need for guardianship.

How do the courts determine if there is a need for guardianship?

The court reviews all documentation submitted and decides whether a guardianship is needed. The court appoints a guardian and grants specific powers of guardianship based on clear and convincing evidence that the proposed ward is incapacitated, and no other alternative resource is available to safeguard the proposed ward's health, safety, or basic well-being, and has determined that guardianship is

necessary and the best means to provide care, supervision, and food, clothing, and/or shelter for the ward. The court strives to grant powers and duties to the guardian that are appropriate as the least restrictive form of intervention consistent with the ward's ability to care for himself or herself.

Can a guardianship be revoked?

The court may remove a guardian and appoint another if the ward or any person interested in the ward's welfare petitions the court. A guardian may petition the court to accept the guardian's resignation and make another order appropriate for the ward. Removal of the guardian can also be court ordered if a ward is no longer incapacitated, or if a guardian has not acted in the best interest of the ward. The court follows the same procedures used to petition for appointment of a guardian to safeguard the rights of the ward.

Are there alternatives to guardianship?

The court determines the least restrictive arrangement for the ward. Alternatives to guardianship exist. *See side 2 of this document for details.*

Alternatives to Guardianship:

N.D. Informed Healthcare Consent Law

– This law deals with persons authorized to provide informed consent for health care if an individual is unable to consent. A hospital or doctor is required to provide treatment in life and death situations even if informed consent cannot be obtained from an individual. North Dakota state law outlines the process for obtaining informed consent for health care for a person who is unable to provide informed consent or if informed consent is unable to be obtained from a person authorized to provide consent for the patient. *NDCC 23-12-13* lists in order of priority who may provide consent in such situations.

Health Care Directives – Every competent adult has the right and responsibility to make decisions relating to his or her own health care, including the decision to have health care provided, withheld, or withdrawn. The individual retains control over his or her own health care during periods of incapacity through the implementation of the health care directives and the designation of an individual (health care agent) to make health care decisions on his or her behalf. It is essential that the individual completely trust the health care agent and communicate his or her wishes clearly to the agent. (Refer to Advance Health Care Planning Resource Guide for North Dakota)

Representative Payee – This is a person or agency that is given the responsibility of managing Supplemental Security Income, Social Security Disability Income, veterans benefits, or other entitlements for an individual who is not able to adequately handle these funds. The payee takes charge of the funds and is responsible for ensuring they are spent on the care, treatment, and needs of the ward. A payee must keep records of transactions and expenditures and file

regular reports. The appointment process involves some specific steps that are outlined by the respective funding source.

Power of Attorney – This gives designated party(ies) the authority to act on behalf of an individual if the need arises. Because this is not a court process, a power of attorney can be established easily and inexpensively. It can be revoked by the individual at any time. The assignment of the power of attorney assumes the person to be competent, but it has few safeguards and lacks accountability. (Concerns: No reporting requirements/no court oversight)

Co-Signers on Bank Accounts – This is an alternative to power of attorney or representative and protective payees. (Concerns: No safeguard or protection for the vulnerable person)

Alternative Resource Plan – This means a plan that provides an alternative to guardianship and uses available support services and arrangements that are acceptable to the alleged incapacitated person. The plan may include the use of service providers such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multipurpose senior citizen centers; home and community-based care, county social services, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities. (Questions of informed consent and vulnerability must be considered and addressed, which may involve capacity issues.)

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